COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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MASTER IN CHANCERY

CHANCERY COURT COURTHOUSE
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June 29, 2011

David Q. Webb
P.O. Box 312
Clearfield, Utah 84089

James R. Leonard
Roeberg, Moore & Friedman, P.A.
910 Gilpin Avenue
Wilmington, DE 19806

Re: In the Matter of the Estate of John L. Webb
Register of Wills Folio No. 147884 – New Castle County, Delaware

Dear Messrs. Leonard and Webb:

David Q. Webb, petitioner in this action ("David" or "Petitioner"), seeks to remove Terrence Avery Webb ("Terrence") as the administrator of John L. Webb's estate.[1] Petitioner also seeks revocation of the renunciation forms executed by other members of his family renouncing their right to be administrator of the estate (the "Letters of Administration"), which were necessarily executed so that the attorney of record for the estate, James R. Leonard, could formally open the estate with the Register of Wills. Petitioner seeks revocation of the Letters of Administration on the grounds that his name was omitted as a "next-of-kin" on the administrator's Petition for Authority to Act as Personal Representative (the "Opening Petition").

The parties have attempted to place before me the ultimate question of paternity—that is, whether David Q. Webb is *in fact* the son of the decedent—but that issue is not for me to decide at this time. Rather, the real issue currently before me is whether Petitioner is entitled, as a child born in wedlock, to be considered a "child" of John L. Webb for purposes of having his name included as a "next-of-kin" on the Opening Petition. In short, the issue is whether Petitioner is presumptively entitled to be considered among the group of heirs of the estate. At this stage of the proceedings, I conclude that the answer is yes.

[1] I refer to relatives of the decedent by their first names not out of disrespect, but for ease of reference and clarity. I refer to the decedent, John L. Webb, as "Webb" or "the decedent," and I refer to his estate as "the estate."

FACTUAL BACKGROUND

John L. Webb married Petitioner's mother, Isabelle Madeline Wright-Webb-Newman ("Isabelle") on March 4, 1954. They were divorced on August 12, 1967.[2] Petitioner was born on October 29, 1962.

On February 12, 2010, John L. Webb passed away at his home. He died intestate. On February 24, 2010, Webb's daughter Joann Pamela Webb-Jackson ("Joann") and two of Webb's sons, Steven LaMotte Webb ("Steven") and Colin Avery Webb ("Colin"), retained James R. Leonard as attorney of record for the estate. During this meeting, they decided that Terrence, a grandson of the decedent, would serve as the administrator of the estate. David and his older brother Keith B. Webb ("Keith") were not present. The next day, February 25, Mr. Leonard sent a letter to David and Keith asking them to renounce their right to be administrator of the estate, so that he could formally open the estate with the Register of Wills.

On March 16, Mr. Leonard and Terrence attended a scheduled appointment with the New Castle County Register of Wills to initiate the probate process for the estate. The Opening Petition lists four living children of the decedent as "next-of-kin": Joann, Steven, Colin and Keith. Webb's wife at the time of his death, Mary E. Spencer-Webb, and another son, Richard Webb, are deceased.

Upon discovering that he was left off of the Opening Petition, David emailed the Register of Wills on March 19, 2010, stating that he was an heir whose name was omitted from the Opening Petition and that his name must be added. Mr. Leonard informed the Register of Wills that Petitioner was intentionally omitted because the administrator (Terrence) said that he was not a legal heir or a kin to the decedent. Petitioner thus filed this challenge to revoke the Letters of Administration, which was transferred to the Court of Chancery. A status hearing was held on May 27, 2010.

Initially, there was no question that the decedent was David Webb's father. When Mr. Leonard was contacted by three of the heirs (Joann, Colin and Steven), they agreed that Terrence would act as the administrator of the estate. The three siblings waived their right to serve as administrator. Mr. Leonard then sent the renunciation papers to David and Keith, requesting that they, too, renounce their authority to act as administrators of the estate, so that Terrence could act as administrator. Mr. Leonard stated at the May 27 hearing that when he subsequently learned that there was a question as to whether or not David was in fact a child of the decedent, "[T]hat was totally new news to me. No one had informed me of that when I was initially contacted by the three siblings that came into my office. ***His name was included in the estate***."[3]

Now, the parties dispute whether or not Petitioner is an heir under the intestate statute. At the May 27 hearing, Mr. Leonard suggested that if David were willing to submit to genetic

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[2] The marriage apparently began deteriorating several years before the divorce. The decedent petitioned for divorce in September 1964, alleging that the couple had already been separated for three years (i.e., since September 1961), but this allegation is not determinative. It is undisputed that—whether or not the decedent and Isabelle were living together or separated during this time—the couple was married until 1967. The presumption of paternity plainly applies.

[3] Hearing Transcript 2-3 (May 27, 2010).

testing, in effect the matter would be resolved. If DNA evidence proved that he is the son of the decedent, he would be included in the estate; if not, not. David declined the invitation to have DNA testing done at that time. "The evidence that I will submit to the Court will supersede the need for genetic testing," he said.[4]

On January 3, 2011, I asked the parties to submit simultaneous briefing addressing the issue of the presumption of paternity of a child born during wedlock, which the parties did. This is my ruling on that issue—the *presumption* of paternity. To repeat, I am not at this time ruling conclusively on the paternity of Petitioner.

ANALYSIS

There is a rebuttable statutory presumption in Delaware that a child born in wedlock is the child of the mother's husband.[5] As Lord Mansfield put it over two centuries ago: "The law of England is clear that the declarations of a father or mother cannot be admitted to bastardize the issue born after marriage."[6] Delaware courts have credited this rule as "form[ing] the basis for the so-called presumption of legitimacy [i.e.,] that a child born during wedlock is presumed to be legitimate."[7] In other words, under traditional common law, a child born to a married

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[4] *Id.* at 6.

[5] The intestate succession statute (Title 12, Chapter 5) is actually silent on this particular point. The statute defines "child and related terms" as follows:

> If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:
>
> > (1) An ***adopted person*** is the child of an adopting parent and not of the natural parent except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent.
> >
> > (2) In ***cases not covered by paragraph (1)*** of this section, a person ***born out of wedlock*** is a child of the mother. That person is also a child of the father, if:
> >
> > > a. The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or
> > >
> > > b. The paternity is established by an adjudication before the death of the father or is established thereafter by preponderance of the evidence; except, that the paternity established under this paragraph is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

12 *Del. C.* § 508. The statute clearly addresses (1) adopted children and (2) children born *out* of wedlock, but the statute simply does not address the situation of a child born *in* wedlock. Thus, there is a question as to whether under Title 12, the presumption of paternity when a child is born in wedlock is conclusive or rebuttable, assuming the presumption exists in this context.

Looking to analogous statutes and common law, however, supports the interpretation that the presumption exists, and that it is rebuttable, in the intestate succession context as well. Title 13 governs Domestic Relations. Chapter 8, the Uniform Parentage Act, defines the parent-child relationship and specifically covers the situation of a child born in wedlock. Under that statute (in the section aptly titled "Presumption of paternity in context of marriage"), it is unambiguously clear that "[a] man is presumed to be the father of a child if: (1) He and the mother of the child are married to each other and the child is born during the marriage." 13 *Del. C.* § 8-204. The presumption is rebuttable under certain circumstances as defined in the Act. Because a child born in wedlock is not addressed in the intestate succession statute and is clearly defined under the Uniform Parentage Act, I find it appropriate to apply the (rebuttable) presumption of paternity here.

[6] *Petitioner F. v. Respondent R.*, 430 A.2d 1075, 1077 n.2 (Del. 1981) (quoting *Goodnight v. Moss*, 98 Eng. Reprint 1257 (1777)).

[7] *Id.*

woman was *conclusively* presumed to be the child of that woman's husband. Delaware has retained the spirit of "Lord Mansfield's Rule," although the law has evolved over the years with advances in genetic testing capabilities. Today, Delaware still presumes that "a child born in wedlock is the child of the mother's husband,"[8] but that is a rebuttable presumption—the presumption of paternity "is a statutory presumption that may be rebutted by clear and convincing evidence to the contrary."[9]

As noted above, Petitioner was undisputedly born *during* the marriage of Isabelle and John L. Webb.[10] Thus, Petitioner is presumed to be the son of the decedent. Indeed, when the family first approached Mr. Leonard, there was no question that Petitioner was an heir of the estate. Although some evidence may have later surfaced suggesting that the decedent denied or disputed paternity, no clear and convincing evidence has been submitted to this Court that would rebut the presumption.[11] Moreover, had the decedent wanted to exclude David as an heir of his estate, he could have written a will naming the rest of his children as beneficiaries and excluding David. He did not do so. Accordingly, I grant the removal of Terrence as administrator of the estate, as Petitioner should have been able to serve as administrator if he so chose,[12] or at least had the ability to determine with the others who would serve as administrator.

In addition, because the other living relatives in the same level of consanguinity as Petitioner, who all waived their right to be administrator of the estate—i.e., Joann, Steven, Colin, and Keith—as well as Webb's siblings who waived their right to be administrator of the estate, may have done so on the assumption that they constituted the entire group of heirs,[13] I grant the revocation of their waivers. Knowing that Petitioner may want to serve as administrator, one of the other siblings may elect to serve as administrator; or they may decide not to waive that right as they previously did. Alternatively, Petitioner may agree that Terrence can serve as administrator and may now decide to waive his right to be administrator. The bottom line is, now that the parties all know that Petitioner has a *presumptive* right as an heir of the estate, they

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[8] *In the Matter of the Estate of Wade N. McGalliard, Jr.*, 1994 WL 773417, at *4 (Del. Ch. Aug. 22, 1994) (citing 13 *Del. C.* § 804(a)).

[9] *Id.* (internal citation omitted).

[10] *See also* Affidavit of Isabelle Madeline Wright-Webb-Newman (May 17, 2010), at ¶¶ 2-3 ("I am the birth mother of David Quintin Webb, born on 29 October 1962, to paternal father John LaMotte Webb during the marriage from March 1954 – May 1967/68 . . . Th[e] pregnancy by my husband (John LaMotte Webb) produced the birth of David Quintin Webb on 29 October 1962.").

[11] The parties suggest that child support proceedings in Family Court from 1979 are conclusive. David suggests that the Family Court determined once and for all that Webb was his father. This is simply not true. In that case, Webb denied that he was David's father. The Family Court ordered genetic paternity testing, which Webb paid for. Isabelle, however, did not cooperate "with reference to the taking of blood tests" and so her petition for child support was dismissed. *See* Response to David Q. Webb's Request for Production Exhibit F. On the other hand, the Family Court's dismissal does not rebut the presumption of paternity in the present case. It merely left the question of whether Webb was in fact David's father inconclusive for the time being.

[12] That is, if he is qualified to serve as administrator. It is up to the Register of Wills to determine whether David would be qualified to serve.

[13] Even if, as Mr. Leonard suggested at the May 27 hearing, at the time the other family members sent the waivers they *did* believe that David was also an heir, they most likely all assumed that he would likewise renounce his right to be administrator of the estate, and they also likely assumed at that time that he would be named along with Webb's other children on the Original Petition. To the extent this ruling affects their renunciation decision, though, the earlier waivers are revoked so that they may now all make a fully informed decision as to who will serve as estate administrator.

may make an informed decision as to who will serve as the estate's administrator and whether to waive their right to be administrator. Down the line, when the estate is settled, *actual* paternity of Petitioner may be something that must be determined before distribution of the estate takes place. At this point, however, the presumption of paternity has not been rebutted by clear and convincing evidence, so Petitioner should have an opportunity to serve as administrator of the estate or be included as "next-of-kin" on the Original Petition. This case is hereby remanded to the Register of Wills to determine who will be the administrator of the estate.

Finally, I briefly address David's motion for sanctions under Court of Chancery Rule 11. The motion is denied on both procedural and substantive grounds. First, David has not satisfied the procedural requirements of Rule 11(c)(1)(A)—his motion was not filed as a motion but rather as a letter addressed to Chancellor Chandler, and it did not describe any specific conduct of Mr. Leonard that would violate subsection (b) of the Rule. In other words, even accepting David's letter as a properly-filed motion, it did not describe any frivolous conduct by Mr. Leonard; nothing to suggest that Mr. Leonard has acted in any way for an improper purpose, or to harass or needlessly increase the cost of litigation; and nothing alleging that Mr. Leonard presented arguments lacking evidentiary support. The only apparent allegation against Mr. Leonard that describes specific conduct is that he accompanied Terrence to the scheduled appointment at the New Castle County Register of Wills and, based on what Terrence told him, omitted David's name as a legal heir to the estate. Assuming, *arguendo*, that that is enough to satisfy the procedural requirement for a Rule 11 motion for sanctions, the motion is denied on substantive grounds. David properly argues that the Court may impose Rule 11 sanctions upon attorneys who make frivolous arguments or advance arguments to the Court that lack any evidentiary support. Mr. Leonard, however, has done none of those things. Mr. Leonard acted in good faith based on information that was provided to him by his clients. This case presents a novel twist on the issue of presumption of paternity, and Mr. Leonard is attempting to address that question just as David is. David has demonstrated no bad faith on the part of Mr. Leonard. Accordingly, the motion for Rule 11 sanctions is denied.

Very truly yours,

/s/ Kim E. Ayvazian

Kim E. Ayvazian
Master in Chancery

cc: New Castle County Register of Wills Office